

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Revision of the Commission's Rules to)	WT Docket No. 05-319
Ensure Compatibility with Enhanced)	
911 Emergency Calling Systems)	
)	

**COMMENTS OF CTIA – THE WIRELESS ASSOCIATION® ON PETITION OF LEAP
WIRELESS INTERNATIONAL, INC.**

CTIA – The Wireless Association® (“CTIA”)¹ submits these comments in support of Leap Wireless International, Inc. (“Leap”) Petition for Limited Waiver and Brief Extension of the December 31, 2005 Enhanced 911 (“E911”) implementation deadline.² For the reasons set forth by Leap, as well as for the reasons set forth by CTIA and the Rural Cellular Association (“RCA”) in their Joint Petition,³ the Commission should suspend the December 31, 2005 deadline for 95 percent penetration of location-capable handsets, and provide Leap additional time to meet the penetration threshold.⁴

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS and ESMR, as well as providers and manufacturers of wireless data services and products.

² See Petition for Limited Waiver and Brief Extension of Leap Wireless International, Inc., CC Docket No. 94-102 (Nov. 11, 2005) (“Leap Request”). See Section 20.18(g)(1)(v) of the Commission’s Rules (requiring Leap to achieve 95 percent penetration of location-capable handsets by December 31, 2005).

³ Joint Petition of CTIA-The Wireless Association and the Rural Cellular Association for Suspension or Waiver of the Location-Capable Handset Penetration Deadline, CC. Dkt. 94-102 (June 30, 2005) (“CTIA/RCA Petition”).

⁴ Leap seeks an additional three months to achieve 95 percent penetration of location capable handsets. See Leap Request at 1, 7.

I. GRANTING LIMITED RELIEF TO LEAP SERVES THE PUBLIC INTEREST

CTIA supports the Commission's wireless E911 goals, including the ubiquitous deployment of Phase II location capabilities. Leap has aggressively and diligently pursued compliance with the Commission's rules, has notably exceeded all milestones to date, and has initiated multiple incentives to promote handset replacement.⁵ Leap has achieved the interim benchmarks laid out in section 20.18(g), but still may not be able to meet the requirement that it achieve 95 percent penetration of location-capable handsets by December 31 of this year.⁶

Leap seeks a brief three month extension of the December 31 deadline as a result of its customers' resistance to changing out their handsets and the substantial difficulties it has encountered while enduring a financial restructuring.⁷ Even with these challenges, Leap anticipates it will achieve the 95 percent benchmark by March 31, 2006 and seeks to defer its obligation to comply with the penetration rule until that date.⁸

In support of its request, Leap has identified the following factors: its history of compliance with the Commission's benchmark 911 requirements and its history of cooperation with PSAPs on the deployment Phase II wireless E 911 location capabilities,⁹ its unique and very

⁵ See Leap Request at 4-5, 7. The Commission itself has "recognized that the E911 deployment schedule was aggressive in light of the need for further technological advancement . . ." *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, Order to Stay, 17 FCC Rcd 14841, 14842 ¶ 5 (2002) ("*Non-Nationwide Stay Order*") (citing *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, FOURTH MEMORANDUM OPINION AND ORDER, 15 FCC Rcd 17442, 17457-58 (2000)).

⁶ 47 C.F.R. § 20.18(g). See Leap Request at 3-4.

⁷ See Leap Request at 3-4.

⁸ See *id.* at 7.

⁹ See *id.* at 5.

competitive service model and its unique customer base,¹⁰ the lack of PSAP readiness which provides no incentive for consumers to upgrade their legacy handsets to location-capable handsets,¹¹ its ongoing efforts to encourage customers to upgrade their handsets,¹² and its progress in achieving penetration of location-capable handsets.¹³

Leap has been diligent in its compliance efforts, and has complied with the Commission's interim requirement that all new digital handsets activated on its network be location capable.¹⁴ Contrary to the Commission's assumptions regarding churn and handset replacement, it has become clear that the majority of carriers will be unable to satisfy the 95 percent penetration threshold by the end of this year.¹⁵ Notwithstanding promotional campaigns and other carrier efforts, a greater than anticipated percentage of wireless consumers have demonstrated their reluctance to surrender their non-location capable handsets for GPS-equipped phones.

Leap's success in providing a unique wireless service to cost-conscious subscribers has resulted in slower churn than expected by Leap or the Commission.¹⁶ Leap should not be

¹⁰ *See id.* at 5-6.

¹¹ *See id.* at 6.

¹² *See id.* at 7.

¹³ *See id.*

¹⁴ *See* Leap's 13th E911 Quarterly Report at 2, at http://gulfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6518176481 (Nov. 1, 2005) ("Leap's 13th Report"). 47 C.F.R. § 20.18(g)(ii)-(iv).

¹⁵ *See* Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, THIRD REPORT AND ORDER, CC Dkt. No. 94-102, at ¶ 51 (1999) ("Third Report and Order"). *See also* Verizon Wireless, Request for Limited Waiver, CC Dkt. No. 94-102 (Oct. 17, 2005); Sprint Nextel Corporation, Sprint Nextel Corporation Request for Limited Waiver, CC Docket No. 94-102 (Sept. 29, 2005); Alltel Corporation, Alltel Corporation Petition for Limited Waiver, CC Dkt. No. 94-102 (Sept. 30, 2005); SouthernLINC Wireless, Request for Waiver by SouthernLINC Wireless, CC Dkt. 94-102 (July 26, 2005); Cellular South Licenses, Inc., Request for Limited Waiver and Extension of the Handset Penetration Deadline of the Commission's Phase II E911 Rules, CC Dkt. 94-102 (Sept. 20, 2005).

¹⁶ *See* Leap Request at 5-6.

penalized for its success in pleasing its customer base. Moreover, Leap's customers typically are less affluent than the average wireless customer and are less receptive to the more robust functionalities that entice customers in more affluent demographics to regularly upgrade their handsets.¹⁷ With its subscribers' preferences in mind, Leap has taken affirmative steps to encourage its legacy customers to upgrade their older handsets through a service credits program.¹⁸

As the National Association of Regulatory Utility Commissioners ("NARUC") has observed in its comments in support of the CTIA/RCA Petition, there are legitimate reasons why the Commission should not enforce its rules in a manner that forces consumers to give up their handsets unwillingly.¹⁹ Accordingly, grant of the limited waiver is consistent with the public interest to ensure that wireless customers who do not want to replace their non-location capable handsets are not needlessly burdened.²⁰

CTIA urges the Commission to extend the December 31, 2005 E911 implementation deadline for Leap. In addition, for the reasons set forth in the CTIA/RCA Petition, CTIA requests that the Commission extend the penetration deadline for all wireless carriers that have

¹⁷ *See id.*

¹⁸ *See id.* at 7.

¹⁹ In its comments, NARUC identifies safety and convenience factors that impede progress towards the December 31, 2005 deadline. *See* NARUC, Initial Comments of the National Association of Regulatory Utility Commissioners Supporting the Joint Petition for Suspension or Waiver of the Location-Capable Handset Penetration Deadline, WT Dkt. 05-288 at 3 (Oct. 17, 2005) ("NARUC E911 Waiver Comments"). *See* Leap Request at 6.

²⁰ *See* Leap Request at 7-8 (explaining that "for Leap to take affirmative measures to force its customers to upgrade their handsets by December 2005 Deadline would likely cause public harm," which in turn would create a "net disservice to public safety and policy goals," and potentially cause "consumer backlash.")

shown a good faith effort to comply with the rules by satisfying the 100 percent digital activation requirement.²¹

II. LEAP HAS DEMONSTRATED GOOD CAUSE TO GRANT LIMITED RELIEF OF THE HANDSET PENETRATION DEADLINE

Wireless carriers that have made a good faith effort to comply with the Commission's rules should not be penalized for factors the Commission and carriers could not have anticipated when the handset penetration deadline was established. As Leap describes in its petition, the carrier has demonstrated its diligence in pursuing the Commission's E911 compliance deadlines, and has a history of considerably exceeding all deployment milestones to date.²² Clearly, Leap's inability to meet the penetration deadline is not a result of its failure to work conscientiously to roll out Phase II service, but rather reflects the challenges it has encountered undergoing a major restructuring and consumers' satisfaction with their service and handsets which makes them resistant to change.

CTIA respectfully requests that the Commission grant Leap's limited waiver as the carrier has demonstrated good cause. Leap's requested relief is specific, focused and targeted in scope, and seeks no other extensions or waivers of the FCC's rules.²³ Leap is very close to satisfying the 95 percent penetration benchmark and asks for an additional three months to come into full compliance with the Commission's rules.²⁴ Leap's history has established its

²¹ See CTIA/RCA Petition at 1. 47 C.F.R. § 20.18(g)(iv). See also NARUC E911 Waiver Comments.

²² See Leap Request at 1, 3-4. See, e.g. Leap's 13th Report.

²³ See Leap Request at 2.

²⁴ Leap reports a penetration rate of at least 91 percent and anticipates 93 percent penetration of GPS phones by December 31, 2005. Leap estimates that a three-month extension will be sufficient to upgrade roughly three thousand existing customers per month. See *id.* at 1-2, 7.

commitment to full compliance and Leap remains fully dedicated to meeting the Commission's 95 percent GPS-capable handset penetration benchmark.²⁵

CONCLUSION

For the foregoing reasons, CTIA supports Leap's request for limited waiver seeking relief of the Commission's 95 percent penetration rule. CTIA also advocates suspension of the ALI-capable handset penetration deadline for all similarly situated wireless carriers whose digital wireless activations are 100 percent location-capable as of December 31, 2005.

Respectfully submitted,

CTIA - The Wireless Association™

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²⁵ See Leap Request at 8.

CERTIFICATE OF SERVICE

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